IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 244 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RADHAKRISHNAN C NAMBIAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 244 of 2004

MR NIRZAR S DESAI for Petitioner No. 1

MR HM PRACHCHHAK, APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 23/08/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Desai for the petitioner and ld. APP Mr. Prachchhak for the State.

2. Rule. Service of Rule is waived by ld. APP Mr. HM Prachchhak for the respondent State. By consent, Rule is fixed for final hearing forthwith.

3. It is submitted by ld. counsel Mr. Desai for the petitioner that the vehicle in question is an old transport vehicle and was running till 2000 or even prior thereto. The assessment of the value of the truck in question is shown at a higher rate and the same is lying with police since last several months and value of the truck in question has deteriorated further. While granting custody of the vehicle in question, ld. lower Court has imposed very harsh conditions and as the owner of the vehicle is of State of Tamil Nadu, it will be difficult for him to bring solvent surety to the satisfaction of the Court, from the State of Gujarat. He has agreed to give bank guarantee of any appropriate amount ranging from Rs.2 Lakh to 2.50 Lakh. He has further stated that the petitioner is ready to abide by any conditions that may be imposed by this Court. He has further submitted that unless the petitioner spends Rs.30,000/ to Rs.40,000/, petitioner will not be able to take the custody of the vehicle and put the same in roadworthy condition.

3. In view of above, without entering into the merits of these submissions, totality of the facts emerging from record takes this Court to a conclusion that conditions imposed by the trial court while releasing the truck in question vide order dated 31.3.2003 passed by I/c Ld.JMFC, Chikhali-Gandevi are very harsh and when the petitioner is ready to give Bank Guarantee of a nationalised bank, the trial court would have directed the petitioner to furnish continuing Bank Guarantee of Rs.3 Lakh of any nationalised bank. Ld. counsel Mr. Desai, in response to the query raised by this Court, has agreed to furnish a continuing Bank Guarantee of Rs.3 Lakh (Rs. three lakh only) firstly for a period of three years and he is also ready to extend further the bank guarantee if the case is not disposed of within first three years by the trial court.

4. So, without going into further details, present Revision Application is partly allowed and conditions imposed by ld. JMFC vide order dated 31.3.2003 while releasing the truck in question are hereby altered and modified as under:-

(i) that the trial Court shall hand over the custody of the vehicle in question on the petitioner furnishing continuing Bank Guarantee of Rs.3 Lakh of any nationalised Bank for a period of 3 years;

(ii) the petitioner shall executed a Bond that the owner of the vehicle and power of attorney

both shall abide by following further conditions:-

(i) the petitioner shall get the Bank Guarantee extended if required beyond the period of 3 years;

(ii) shall produce the truck in question as and when ordered by the trial Court;

(iii) shall not alienate or otherwise transfer the truck in question to any third party nor shall create any charge on the vehicle. However, it is clarified that handing over of the truck on hire basis to the customer shall not be construed as transfer because the same would be subject to the outcome of the case pending against the present petitioner.

(iv) this release of the vehicle is temporary and subject to the final orders that may be passed by the ld. trial Court.

5. The impugned order passed by the trial Court stands modified accordingly. Rule is made absolute accordingly. Direct Service is permitted.

[C.K. BUCH, J]

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